

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11449 of 1993

Date of decision: 3-3-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARISINGHBHAI K. KHERADIA

Versus

PRINCIPAL, VIRANI HIGH SCHOOL

Appearance:

MRS SANGEETA N PAHWA for Petitioner
MR RA MISHRA for Respondent No. 1
Ms. P.S. Parmar for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 3-3-1997

C.A.V. JUDGEMENT

The matter has come up on note of the counsel for the petitioner for listing the case for hearing at an early date. At the request of the counsel for the petitioner the matter has been taken up for hearing.

The petitioner, a class IV employee has filed this special civil application, challenging the order dated 15th February, 1993 passed by respondent No.1, by which he was ordered to be superannuated from service with effect from 31st December, 1993. The facts of the case are that the petitioner was appointed as peon on 1st July, 1955. In the service record, 5th December, 1933 was entered as his date of birth. After about 20 years of his appointment he made application on 31st December, 1975 stating that his date of birth is 15th June, 1937 and as such necessary correction may be made therein. This correction was sought on the basis of his own affidavit. On the same date respondent No.1 passed order for correction of date of birth in the service record of the petitioner from 5th December, 1993 to 15th June, 1937. By the order impugned in this special civil application he was ordered to be retired from service with effect from 31st December, 1993, treating his date of birth to be 5th December, 1933.

2. Learned counsel for the petitioner contended that once date of birth was corrected, it has to be accepted and the petitioner could not have been ordered to be retired from service on the basis of the date of birth which was initially entered in the service record. It has next been contended by the learned counsel for the petitioner that the change of date of birth has been made without notice or affording opportunity of hearing to the petitioner. On the other hand the counsel for the respondents supported the order impugned in this petition.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. So far as the second contention of the learned counsel for the petitioner that the date of birth has been changed without notice to the petitioner, there is no dispute on this point. But the question is whether only on this ground any relief should be granted to the petitioner or not. It is permissible for the employee to pray for correction of date of birth entered in his service record within reasonable time, after his entering service. Admittedly, in the present case the petitioner has not objected the entry of his date of birth as 5th December, 1933 in his service record for about 20 years

from the date of entry in service. The petitioner has given out in the special civil application that he submitted one affidavit on 3rd December, 1975 showing the correct date of birth as 15th June, 1937, and on the basis of the said affidavit correction has been made in the record on the same day.

4. In the reply to the special civil application, respondents have come up with the case that according to the information received from the Police Department, Rajkot, date of birth of the petitioner is 30th June, 1927. It has further been stated that correction of date of birth, on the basis of the affidavit of the petitioner was carried out on 3rd December, 1975. In the original service book this date '3rd December, 1975' is not there. Affidavit regarding correction of date of birth, along with application dated 22nd December, 1975, was given to the School authorities on 27th December, 1975. So, even if change was to be made in the entry, it could be made only after 27th December, 1975. Therefore it is a case of unauthorized tampering with the service record.

5. The date of birth has been changed, as per the petitioner's own case, on the basis of his own affidavit. The petitioner has produced the said affidavit on record of special civil application at page 9. The petitioner has stated in the affidavit that his date of birth is 15th June, 1937. So the date of birth has been changed in the present case on the basis of evidence of the petitioner himself, who is a person surely interested. If the date of birth is permitted to be changed on the basis of the affidavit of the employee himself, then this court will open floodgate of fraudulent changes of date of birth. Moreover, such affidavit cannot be said to be an evidence, much less a cogent, satisfactory and unimpeachable evidence. It is a case where something is coming from the mouth of the person interested for his own benefits. In the case of Secretary & Commissioner, Home Department vs. R.Kirubakaran, reported in AIR 1993 SC 2647, the Hon'ble Supreme Court held that correction of date of birth of public servant is permissible, but that should not be done in a casual manner. Any such order must be passed on materials produced by the public servant from which the irresistible conclusion follows that the date of birth recorded in the service book was incorrect. The Court or Tribunal has first to examine, whether the application has been made within the prescribed period under some rule or administrative order. If there is no rule or order prescribing any period, then the Court or Tribunal has to examine, why such application was not made within a reasonable time

after joining the service.

6. Reference may also have to be made to the latest decision of the Hon'ble Supreme Court in the case of Commissioner of Police, Bombay vs. Bhagwan V. Lahane, reported in (1997)1 SCC 247. In para 6 of the judgment the Hon'ble Supreme Court observed as under:

"It is not in dispute that the respondent had produced Secondary School Leaving Certificate which contains his date of birth as 12-11-1948. One of the instructions indicates that his own statement or that of a parent, guardian, friend or relative on the date of entry in service and also the School Leaving Certificate, Secondary School Certificate Examination, Matriculation Certificate or University Certificate, is the relevant document for that purpose. The respondent, admittedly, filed his Secondary School Leaving Certificate at the time of entry into service on the basis of which his date of birth was reflected in the service register as 12-11-1948. The respondent ought to have produced the reliable material to show that the date of birth mentioned in the School Leaving Certificate was incorrect. No such material was produced by him. The extract from the birth register produced by him along with his representation being inconsistent with the School Leaving Certificate produced by him earlier, he ought to have proved to the satisfaction of the competent authority that he was given a name before or soon after his birth and that his name was entered in the birth register at the time of registration of his birth. Ordinarily, a child is not given a name before birth and in the entry in the birth register only sex, viz., male or female would be mentioned. After naming ceremony, the name is given. It is, therefore highly doubtful if the parents of the respondent who were villagers and illiterate had named the appellant either before or on the day of his birth. The explanation given now on behalf of the respondent that his elder brother, who was named Bhagwan, was born on 26-11-1949 and, therefore, his date of birth cannot be 12-11-1948 is also not convincing. His further explanation that as his elder brother died, his parents thought of calling him by the same name is also not believable. Moreover, if that was so, his

parents would not have committed a mistake in giving his date of birth to the school authorities even though they were illiterate. It appears that he got the entry in the birth register corrected, then obtained a copy of it and produced the same before the authority. Once it was found to be doubtful, the authorities were right in not correcting his date of birth in the service-book. Admittedly, the School Leaving Certificate was produced by the respondent and the entry in the service-book was made on the basis of the date of birth mentioned therein. As he failed to show that the said entry was made due to want of care on the part of some other person or that it was an obvious clerical error, the Tribunal ought not to have directed the appellant to correct the same."

Reference in this regard may also be made to the decision of the Supreme Court in the case of Burn Standard Co. Ltd., vs. Shri Deenabandhu Majumdar, reported in JT 1995(4) SC 23 and to the decision in the case of Union of India vs. Kantilal, 1995(2) GLR 1050.

7. The counsel for the petitioner very fairly conceded that the basis of change of date of birth was only the affidavit of the petitioner and nothing else. The court has asked the petitioner how the petitioner himself could have made statement about his own date of birth. The counsel for the petitioner was not in a position to give any satisfactory reply. The petitioner could not know about his own date of birth. At the time of entry in the service, the date of birth of the petitioner was recorded as 5th December, 1933 and it was recorded on the basis of the petitioner's own disclosure or declaration. So the date of birth has been entered on the basis of the petitioner's own say and as such he is estopped from saying something else after 20 years by filing affidavit. The petitioner is bound by his own declaration and it could have been changed when he produced unimpeachable evidence. The very correction of date of birth of the petitioner was illegal and as such if the same has been altered without giving notice to the petitioner, no relief can be granted to the petitioner on that ground. If the contention of the counsel for the petitioner that the second correction is made without giving notice to the petitioner is accepted, then this court will be restoring the entry of date of birth of the petitioner, which is nothing but manufactured and

concocted by the petitioner himself for his own benefits.
This writ petition is wholly frivolous and deserves to be
dismissed.

8. In the result this writ petition fails and the
same is dismissed. Rule discharged. The petitioner is
directed to pay Rs.1,000/- towards cost of this special
civil application to the respondents.

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